IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(*Special Original Jurisdiction*)

TUESDAY, THE EIGHTEENTH DAY OF DECEMBER
TWO THOUSAND AND SEVEN

P R E S E N T

THE HON'BLE SRI JUSTICE P.S. NARAYANA
* * *

WRIT PETITION No.26808 of 2007

Between:

Smt.H. Sreedevi … Petitioner

Versus

The Joint Collector,
Kurnool,
Kurnool district & Anr. … Respondents

Counsel for the Petitioner: Sri K V RAGHUVEER (5135)

Counsel for the Respondents: GOVT.PLEADER FOR CIVIL SUPPLIES

THE HON'BLE SRI JUSTICE P.S. NARAYANA
* * *

WRIT PETITION No.26808 of 2007

O R D E R :

Heard Sri KV Raghuveer, the learned counsel representing the writ petitioner and the learned Assistant Govt.Pleader for Civil Supplies.

2. On 14-12-2007 the learned Assistant Govt.Pleader had taken notice and requested time to get instructions. The instructions received by the learned Asst.Govt.Pleader for Civil Supplies of this Court are placed before this Court.

3. Sri K V Raghuveer, the learned counsel representing the writ petitioner had taken this court through the contents of the affidavit filed in support of the writ petition and also the nature of the order made on 05-12-2007 by the first respondent. The counsel also pointed out that without giving any opportunity whatsoever, the said order was made and the same is not in accordance with the A.P. State Public Distribution System Control Order, 2001 {hereinafter referred to in short as the order for the purpose of convenience}.

4. The learned Asst.Govt.Pleader for Civil Supplies having placed the instructions before this court would maintain that in-as-much-as the first respondent was satisfied it is not the case for interference, the appeal no doubt was rejected at the stage of admission.

5. The writ petition is filed for a writ of mandamus, declaring the action of the first respondent in dismissing the appeal, without giving opportunity to the petitioner vide Proceedings RC.DSO/CS3/455/2007 dated 05-2-2007 as illegal, arbitrary and violative of the conditions of the AP State Public Distribution System Control Order, 2001 and consequently to set aside the same and to pass such other suitable orders as this Court may deems fit and proper in the circumstances of the case.

6. The impugned order dated 05-12-2007 reads as hereunder:

IN THE COURT OF THE DISTRICT COLLECTOR : KURNOOL

Present: Sri KRBHN CHAKRAVARTHI, M.Sc.,

RC.DSO/CS3/455/2007 Dated: 05-12-2007.

Sub: Civil Supplies - Kurnool district – Appeal – Kurnool city – Smt.H.Sridevi, FP shop dealer case under section 6A booked - authorization suspended pending enquiry appeal filed – stay rejected – orders – issued.

Ref: 1) RDO Kurnool Procdgs.No.Rc.B/1744/07 dated 23-11-2007.
2) Appeal filed by Smt.H.Sridevi, FP shop dealer Kurnool city, dated 17-11-2007.

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ORDER :

Through the reference 2nd read above, Smt. H. Sridevi, FP shop dealer, Kurnool city shop no.4 has filed an appeal under clause 20 (1) (i) of APSPDS Control Order 2001 against the orders of the Revenue Divisional Officer, Kurnool in the reference 1st read above, requesting to grant stay of the operation of the orders of the Revenue Divisional Officer, Kurnool.

BRIEF FACTS OF THE CASE :

The Dy.Tahsildar (CS) Koilkuntla reported that on 20-10-2007 inspecting the FP shop no.4. The FP shop dealer, Smt.H.Sridevi is indulging in clandestine business black-marketing the Ecs seized the available stock of 6.15 quintals of PDS rice after verification of record maintained by the FP shop dealer as detailed below.

Commodity	O.B.	Receipt during October 2007	Total	Sales as coupons	Book Balance	Ground balance	Variation in quintals
PDS rice	0.20	60.28	60.48	42.68	17.80	6.15	13.40
AAY rice	0	2.10	2.10	0.35	1.75	6.15	13.40
Total	0.20	62.38	62.58	43.03	19.55	6.15	13.40

In view of the above taking into the huge variation of 13.40 quintals of rice into consideration, it is prima fracie established that the dealer is diverting the Ecs into black-market.

Basing on the report of the Dy.Tahsildar (CS) Koilakuntla the RDO Kurnool suspended the authorization of the dealer, pending enquiry vide Procdgs.No.RC.B.1744/2007, dated 17-1-07.

Aggrieved by the above orders of the RDO, Kurnool, the dealer has filed an appeal petition before the Joint Collector for grant stay and to restore the authorization.

After examined the grounds urged by the petitioner found that they have no strength. The coupons received from the card holder shall produce before inspecting authorities at any time and prove her innocence, if any but not xerox copies. Hence, stay is rejected and the appeals is dismissed at the admission stage.

Sd/-KRBHN CHAKRAVARTHI
Joint Collector,
Kurnool

//t.c.f.b.o.//
Sd/- Asst.Supply Officer.

7. In the instructions placed before this Court, it is stated that the Revenue Divisional Officer, Kurnool had suspended the authorization of the dealer under pending enquiry. One more action is pending with the Revenue Divisional Officer, Kurnool is that either to restore the authorization or cancel the authorization after conducting the enquiry.

Hence, the request of the writ petitioner for grant of stay is rejected and the appeal is dismissed at the admission stage.

This is submitted for favour of kind information.

8. The petitioner has been functioning as fair price shop dealer for the past several years without any complaint from the card holders or from the appointing authority at any point of time. It is also averred that the second respondent by his Proceedings Rc.B-1868/2007 dated 13-11-2007 suspended the authorization of the petitioner, pending enquiry based on the report submitted by the Assistant Supply Officer, Kurnool vide reference RC.No.ASO/106/07 dated 01-11-2007. The said report was not furnished to the petitioner along with the proceedings issued to the petitioner. The second respondent stated in his prior proceedings the report submitted by the Asst.Supply Officer stated that there is excess quantity of stock of 1.62 quintals of wheat and sale register was not maintained. The said order made by the Revenue Divisional Officer, Kurnool, the second respondent herein, reads as hereunder:

PROCEEDINGS OF THE REVENUE DIVISIONAL OFFICER : KURNOOL

PRESENT: Smt. S. SASI DEVI, M.A.,

Rc.B 1744/2007 Dated:23-10-2007.

Sub: Civil Supplies – Kurnool city – Smt. H.Sridevi, FP shop Dealer, shop no.4 – Kurnool city – case under section 6-A booked – authorization suspended pending enquiry - Orders – Issued.

Ref: Report of Sri KH Rahman, Dy.Tahsildar (CS) Koilakuntla, dated nil.

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O R D E R :

The Deputy Tahsildar (CS) Koilakuntla, in the reference read above has reported that on the instructions of the Dist.Supply Officer, Kunrool, Sri R.Ramudu Dy.Tahsildar (CS) Banaganapalli and Sri Sham Sunder Rao, Food Inspector, Kurnool to inspect the FP shop no.4 have proceeded to FP shop no.4 on 19-10-2007 at 8:00 a.m. and found the same was closed that though the FP shop dealer was informed regarding arrival of the inspecting officials but she did not turn up and therefore the FP shop was sealed at 11.00 a.m. On 20-10-2007 he has proceeded to the FP shop along with Sri R.Ramudu, Dy.Tahsildar (CS) Banaganapalli, Sri A.Clemant, Food Inspector, Kurnool and Sri D.Lokeswar Rao, Sr.Asst.Kurnool and inspected the sealed FP Shop and found the following stock at the FP shop:

Commodity	O.B.	Receipt during October 2007	Total	Sales as coupons	Book Balance	Ground balance	Variation in quintals
PDS rice	0.20	60.28	60.48	42.68	17.80	6.15	13.40
AAY rice	0	2.10	2.10	0.35	1.75	6.15	13.40
Total	0.20	62.38	62.58	43.03	19.55		

The Dy.Tahsildar (CS) Koilakuntla has reported that the FP shop dealer is indulging in clandestine business, black marketing the essential commodities meant for poor and therefore seized the available stock of 6.15 quintals of rice and recommended for taking action against the FP shop dealer.

In view of the above, taking into the huge variation of 13.40 quintals of rice into consideration, it is prima facie established that Smt.H.Sridevi, FP shop dealer shop no.4 Kunrool city is indulging in clandestine business and the essential commodities that are meant for poor and down trodden cardholders diverting into black market and thereby she deprived off the legitimate right of the card holders and violated the conditions of AP State Public Distribution Control Order, 2001. Hence, the authorization of Smt.H.Sridevi, Shop dealer shop no.4, Kunrool city is hereby suspended pending enquiry.

Sri Y.Anjaneyulu, FP shop dealer shop no.31, Kurnool city is kept in charge of the FP shop no.4 till further orders. The Asst.Supply Officer, Kurnool is directed to take necessary action to allot essential commodities to the incharge FP shop dealer relating to the FP shop no.4.

(An Appeal lies to the Joint Collector within 30 (thirty) days from the date of receipt of this order).

Sd/- S. SASIDEVI
REVENUE DIVISIONAL OFFICER
KURNOOL.

9. It is also stated that after suspending of the authorization of the petitioner by the second respondent, the petitioner preferred an appeal before the first respondent along with the stay application. Further the first respondent without fixing any date of hearing and without giving an opportunity for submitting explanation dismissed the appeal at the admission stage basing on the report of the Dy.Tahsildar vide Proceedings RC.DSO/CS3/455/2007 dated 05-12-2007. It is stated that in the grounds of appeal and in the stay application, the petitioner stated that the inspecting authorities have not considered the original coupons and stated that the xerox copies shall be produced before the first respondent and originals at the time of enquiry. It is further stated that the first respondent had dismissed the appeal by rejecting the stay without giving an opportunity as per clause 17 of the Order 2001 which is illegal and violative of conditions of the Control Order.

10. It is also averred that the second respondent pending enquiry and before giving a chance to

prove her innocence is trying to appoint a temporary dealer due to the pressure mounted on the second respondent by the local leaders. If the same is done, the petitioner and her family will be put to irreparable loss and injury.

13. Further it is stated that the first respondent by his Proceedings RC.DSO/CS3/455/2007 dated 05-12-2007 without giving any opportunity of hearing, dismissed the appeal along with stay application at the stage of admission. Clause 17 mandates that before disposing of any appeal, the appellate authority shall give opportunity to the parties before passing an order. Further it is stated that the in-charge had lifted the stocks. In the light of the same, status quo obtaining as on today to be maintained and till completion of the enquiry, the second respondent not to make any appointment as temporary dealer.

14. Certain other further averments were made relating to the political pressure and the other aspects as well in the affidavit filed in support of the writ petition.

15. Though Clause 17 of the AP State Public Distribution System Control Order, 2001 had been referred to in the affidavit filed in support of the writ petition, it is brought to the notice of this court that Clause 20 of the AP State Public Distribution System Control Order, 2001 deals with appeals, thus:

> (1) Any person aggrieved by any order passed by the Appointing Authority under clause (5) may, within thirty days from the date of receipt by him/her of such order, appeal against such order, where it is passed by.
>
> i) The RDO or the Sub Collector or the DSO (city) having jurisdiction over the area in respect of the Visakhapatnam city to the Joint Collector in the district.
>
> ii) The Chief Rationing Officer in Hyderabad district.
>
> In disposing of any appeal under this clause, the appellate authority may, after giving the party an opportunity of making his representation, pass such order thereon as that authority may deem fit.
>
> 2. Pending disposal of an appeal, the appellate authority may direct that the order appealed against shall not take effect until the appeal is disposed off.

16. In an ordinary course, this court would have remanded the matter to the first respondent to afford proper opportunity to the writ petitioner and dispose of the appeal in accordance with law. However, as can be seen from the nature of the order, it appears that the first respondent disposed of the matter keeping in view of the orders made by this court, may be in undue haste. It

is needless to say that it is a case of suspension pending enquiry and as stated above, the stocks were already lifted by the in-charge dealer. In the light of the facts and circumstances, *status quo* obtaining as on today to be maintained for a period of six weeks and till completion of the enquiry the second respondent not to make any appointment as temporary dealer.

17. With the above direction, the writ petition is disposed of at the stage of admission. No costs.

JUSTICE P . S . NARAYANA

18/12/2007.

NB:

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1) Operative Portion of the Order by wire at party's costs.

2) CC of the Order tomorrow.

B/o. ISL

NB: LR COPY TO BE MARKED
B/O. ISL.